OLC 75-3015

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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

26 NOV 1975

Mr. James M. Frey
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

Enclosed are proposed reports to Chairman Price, House Committee on Armed Services, in response to requests for our views on H.R. 5873 and H.R. 7781. Both bills would amend the National Security Act of 1947. Advice is requested as to whether there is any objection to the submission of this report from the standpoint of the Administration's program.

The House and Senate Select Committees studying the intelligence community are scheduled to issue their final reports by 31 January 1976 and 29 February 1976, respectively. We expect legislative hearings on the National Security Act to begin thereafter, and want the Congress to have the benefit of our reports on existing proposals by that time. Therefore, I request that OMB clearance be granted by 31 January 1976 on the two attached letters, as well as letters previously submitted for clearance to OMB on H.R. 343 and H.R. 1267. Thank you.

Sincerely,

SIGNED

George L. Cary
Legislative Counsel

Enclosures

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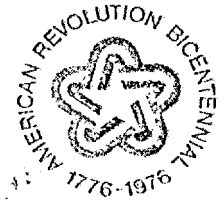


CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

Honorable Melvin Price, Chairman
Committee on Armed Services
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for the views of the Central Intelligence Agency on H.R. 5873, which would amend the National Security Act of 1947 (50 U.S.C. 403). The bill would establish statutory requirements for substantive intelligence reporting by the Agency to specified congressional committees; make such information available to all Members of Congress and designated staff members; establish criminal penalties for the violation of the proscriptions against the Agency assuming any police, subpoena, law-enforcement powers, or internal-security functions; and expressly subject Agency witnesses to existing criminal penalties for willfully misleading Congress or failing to respond fully to certain congressional inquiries.

Proposed section (g) of the National Security Act would require that the Agency fully and currently inform, and prepare special reports when requested by, specified committees on information collected by CIA concerning "the relations of the United States to foreign countries and matters of national security, including full and current analysis by the Agency of such information." The bill specifies the Committee on Armed Services and International Relations of the House of Representatives and Armed Services and Foreign Relations of the Senate as recipients of this information.

The role of the Congress in the formulation of foreign policy requires that it obtain information on foreign developments. In response to this need, this Agency briefs a number of committees on foreign developments, using the most sensitive information available. In 1975, for example, the following committees have received such briefings: the Armed Services and Appropriations Committees of both Houses, the International Relations, Agriculture, Merchant Marine and Fisheries, and Judiciary Committees of the House, the Foreign Relations and Judiciary Committees of the Senate, the Joint Economic Committee and Joint Committee on Atomic Energy. I believe this arrangement has been satisfactory from the standpoint of the Committees.

However, I am concerned that the proposed authority of congressional committees to task CIA to prepare special reports goes beyond sharing our intelligence, and would subject CIA to a degree of direction by several congressional committees. Congress established the Agency under the National Security Council, part of the Executive Office of the President, and made the Director of Central Intelligence the President's principal foreign intelligence advisor. I believe direction of the Agency must originate solely within the Executive branch. To do otherwise would raise fundamental separation of powers questions. On a practical level, subjecting the Agency to a degree of direction by several congressional committees could lead to conflicts of priority and interest between our responsibilities to the President and National Security Council on the one hand, and the committees on the other, or indeed between the committees themselves.

I am also concerned that the language in H.R. 5873 that the Agency report "intelligence information collected by the Agency" could be interpreted to include raw reports. No committee could possibly assimilate, utilize, or evaluate all the Agency's raw intelligence reports; in addition, such a requirement would be extremely burdensome to the Agency. Most importantly, this requirement could jeopardize the identity of our intelligence sources and methods, as substantive intelligence often contains clues to its source. As you know, section 102(d)(3) of the National Security Act charges me with the responsibility to protect intelligence sources and methods from unauthorized disclosure.

Proposed section (h) of H.R. 5873 would provide for the dissemination of intelligence information received by a congressional committee under proposed section (g) to any Member who requests it, and to any officer or employee of the Congress who has been designated by a Member to receive it, and who has been cleared by the committee. I believe this proposal goes too far in disseminating sensitive intelligence information; potentially every member of a personal or committee staff could be granted access to this information. As I stated above, inherent in any substantive intelligence are clues to the sources of the information, and the risks of compromise are increased by an unnecessarily widespread dissemination of Agency information throughout the principal political branch of our Government.

Proposed section (i) would establish a criminal penalty for the willful violation of the existing prohibitions against the Agency assuming any police, subpoena, law-enforcement powers, or internal-security functions. As you know, Mr. Chairman, a few past Agency programs have involved certain domestic activities improper for this Agency. After a review of these activities by the Agency's Inspector General in May 1973, I ordered these programs terminated and issued specific directives to insure no such programs were undertaken in the future. Although some would argue that the past

improprieties are evidence that criminal penalties are necessary to deter such activities in the future, I cannot agree. Clarification of ambiguities in the present law coupled with the awareness among CIA employees, the public, and Executive branch and congressional oversight mechanisms of the proper limits of CIA activity should be sufficient.

If, however, Congress should enact criminal penalties in this area, the existing proscriptions must be rewritten in more specific terms. I question whether existing language, particularly the phrase "internal-security functions" is sufficiently specific to satisfy the due process requirement of the 14th Amendment of the Constitution that criminal laws give explicit warning of the conduct which is proscribed.

Proposed subsection (j) would stipulate that Agency employees who willfully mislead Congress, or who fail to respond fully and completely to a request of the Congress or a duly authorized committee acting under proposed subsection (g) shall be punishable under sections 192 - 194 of Title 2, United States Code, and section 1621 of Title 18, United States Code. Section 192 of Title 2 applies to "every person" summoned as a witness before Congress or summoned to produce papers upon any matter under inquiry before either House or any committee of either House, and establishes a criminal penalty for a default in appearing or the failure to answer a pertinent question. Section §1621 establishes a criminal penalty for the perjury of individuals who have taken an oath, where the law of the United States authorizes an oath to be administered. These laws apply to CIA personnel, making subsection (j) superfluous in that respect.

Mr. Chairman, I would welcome legislation amending the National Security Act to clarify the extent of this Agency's statutory authorities. However, any amendment must preserve this Agency's capability to fulfill its obligations to the nation's policy makers, which is only possible if our intelligence sources and methods are also protected from disclosure. Of course, any changes to the Act must also safeguard the constitutional rights of American citizens. Since H.R. 5873 does not give adequate treatment to all of these considerations, I oppose its enactment in its present form.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. E. Colby
Director

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

Honorable Melvin Price, Chairman
Committee on Armed Services
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for the views and recommendations of the Central Intelligence Agency on Mr. Bennett's proposal, H.R. 7781, to amend the National Security Act of 1947 (50 U.S.C. 403). H.R. 7781 encompasses the legislative recommendations of the President's Commission on CIA Activities Within the United States (the Rockefeller Commission), which issued its report in June 1975.

Several of the changes proposed in this bill would add the word "foreign" before the word "intelligence" in section 102(d) of the Act, which enumerates CIA's functions. I fully support this change and in fact first suggested it during my July 1973 confirmation hearings. The Agency's charter relates solely to the foreign intelligence field, and this limitation should be made explicit in the National Security Act.

Section (4) of H.R. 7781 proposes to add the word "collect" in section 102(d)(3) of the Act, so that this exposition of Agency duties would read:

> "(3) to collect, correlate, and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities" (emphasis added).

CIA has long been authorized to collect foreign intelligence, pursuant to section 102(d)(4) of the Act, which directs CIA "to perform ... such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally," and pursuant to section 102(d)(5) of the Act which directs the Agency "to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct."

Nevertheless, collection of foreign intelligence is such a fundamental responsibility of this Agency that it should be explicitly recognized as a statutory duty, and I therefore support this amendment.

Section (5) of the bill would add the following clause to section 102(d)(3) of the Act: "That except as specified by the President in a published Executive Order, in collecting foreign intelligence from United States citizens in the United States or its possessions, the Agency shall disclose to such citizens that such intelligence is being collected by the Agency." This provision is completely consistent with the Agency's policy and practice, and I therefore have no objection to this section.

Sections (6) and (9) of the bill alter the present responsibility of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure by striking the current statutory language in the National Security Act, and by replacing it with a new section which embodies the concept, but in substantially amended form. The proposed section provides that it shall be the duty of the Agency, under the direction of the National Security Council,

> "(6) to be responsible for protecting sources and methods of foreign intelligence from unauthorized disclosure. Within the United States, the responsibility established by paragraph (6) shall be limited (A) to lawful means used to protect disclosure by (i) present or former employees, agents, or sources of the Agency; or (ii) persons, or employees of persons or organizations, presently or formerly under contract with the Agency or affiliated with it; and (B) to provide guidance and technological assistance to other departments and agencies of the United States performing intelligence activities."

One of the underlying purposes of this proposal is to replace the vagueness of the present section with specifics. I support this goal, and have no objection to the specific restrictions set forth in proposed section (6). However, I must oppose changing the existing language from "the Director shall be responsible for protecting intelligence sources and methods from unauthorized disclosure" to a requirement that CIA be "responsible for protecting sources and methods of foreign intelligence from unauthorized disclosure" because:

(1) a change in the statutory language would likely erode the protection provided by Federal court decisions such as United States v. Marchetti, 466 F.2d 1309 (4th Cir. 1972) and Heine v. Raus, 399 F.2d 785 (4th Cir. 1968); and

(2) the Central Intelligence Agency is not as well placed to protect the sources and methods of other agencies in the intelligence community as is the Director of Central Intelligence, who serves as the nation's senior foreign intelligence officer, and is tasked with reviewing the activities of all intelligence agencies in order to improve the overall intelligence product and make recommendations regarding the allocation of resources.

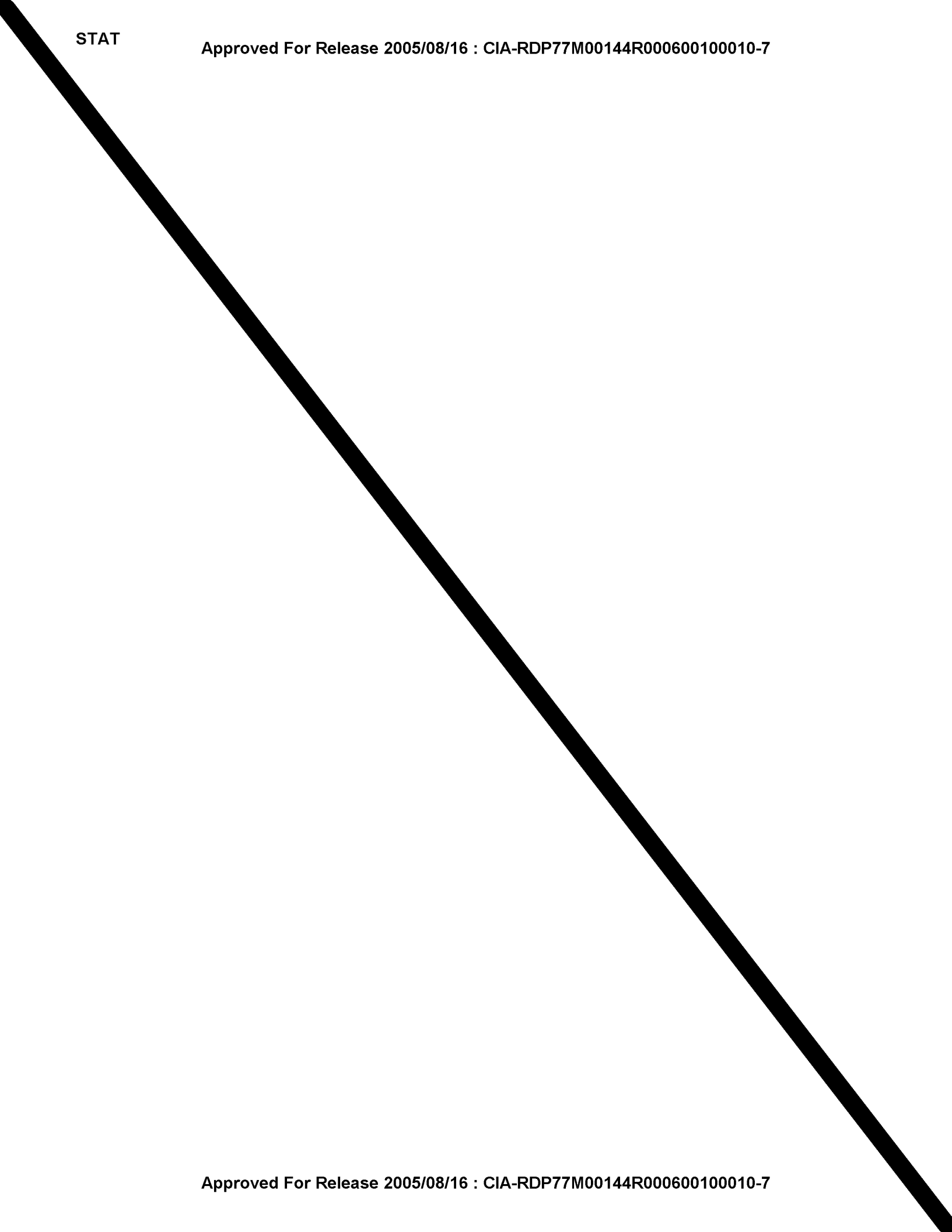
In addition, the Director's responsibility to protect intelligence sources and methods from unauthorized disclosure has been the basis of the protection of much sensitive information from the disclosure requirements of the Freedom of Information Act. Section (b)(3) of that Act exempts matters "specifically exempt from disclosure by statute." If any changes are made in the language of this specific responsibility, it is essential that the legislative history affirm that the new language is an exemption statute for Freedom of Information purposes.

Mr. Chairman, the Rockefeller Commission made some meaningful recommendations for reform of this Agency's basic charter. Mr. Bennett has done the nation a service by introducing these recommendations before the Congress. I believe these proposals would substantially contribute to relieving any public anxiety over the proper scope of CIA's activities. With the reservations I have outlined above, I support these recommendations and believe they warrant the Committee's careful consideration.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. E. Colby
Director



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